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No. 91-443

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1991

DANIEL R. HODGE, M.D.,

Petitioner,

vs.

LAKE SHORE HOSPITAL, INC., STAT SERVICES, INC.,
JOSEPH G. CARDAMONE, M.D., LYNN FELDMAN, D.O.,
JAMES B. FOSTER, C.E.O.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS LAKE SHORE HOSPITAL, INC. AND JAMES B. FOSTER, C.E.O.

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i.

QUESTIONS PRESENTED

1. Whether the Court of Appeals properly affirmed the dismissal of petitioner's claim based on 42 U.S.C. §1981 because petitioner was unable to produce any evidence of racially discriminatory intent?

2. Whether the Court of Appeals properly upheld the dismissal of petitioner's claim under 42 U.S.C. §1981 because the alleged discriminatory conduct involved an alleged termination of employment and not the formation of a contract?

3. Whether the Court of Appeals properly affirmed the dismissal of petitioner's claims based on 42 U.S.C. §§1985 and 1986 because the petitioner was unable to produce any evidence of racial or class-based animus and could not show any state action as required to support a claim for violation of the fourteenth amendment to the United States Constitution?

4. Whether the Court of Appeals properly affirmed the District Court award of sanctions against the petitioner based on the petitioner's violation of Rule 11 of the Federal Rules of Civil Procedure?

ii.

**STATEMENT PURSUANT TO
RULE 29.1**

Lake Shore Hospital's subsidiary is LSP, Inc.

iii.

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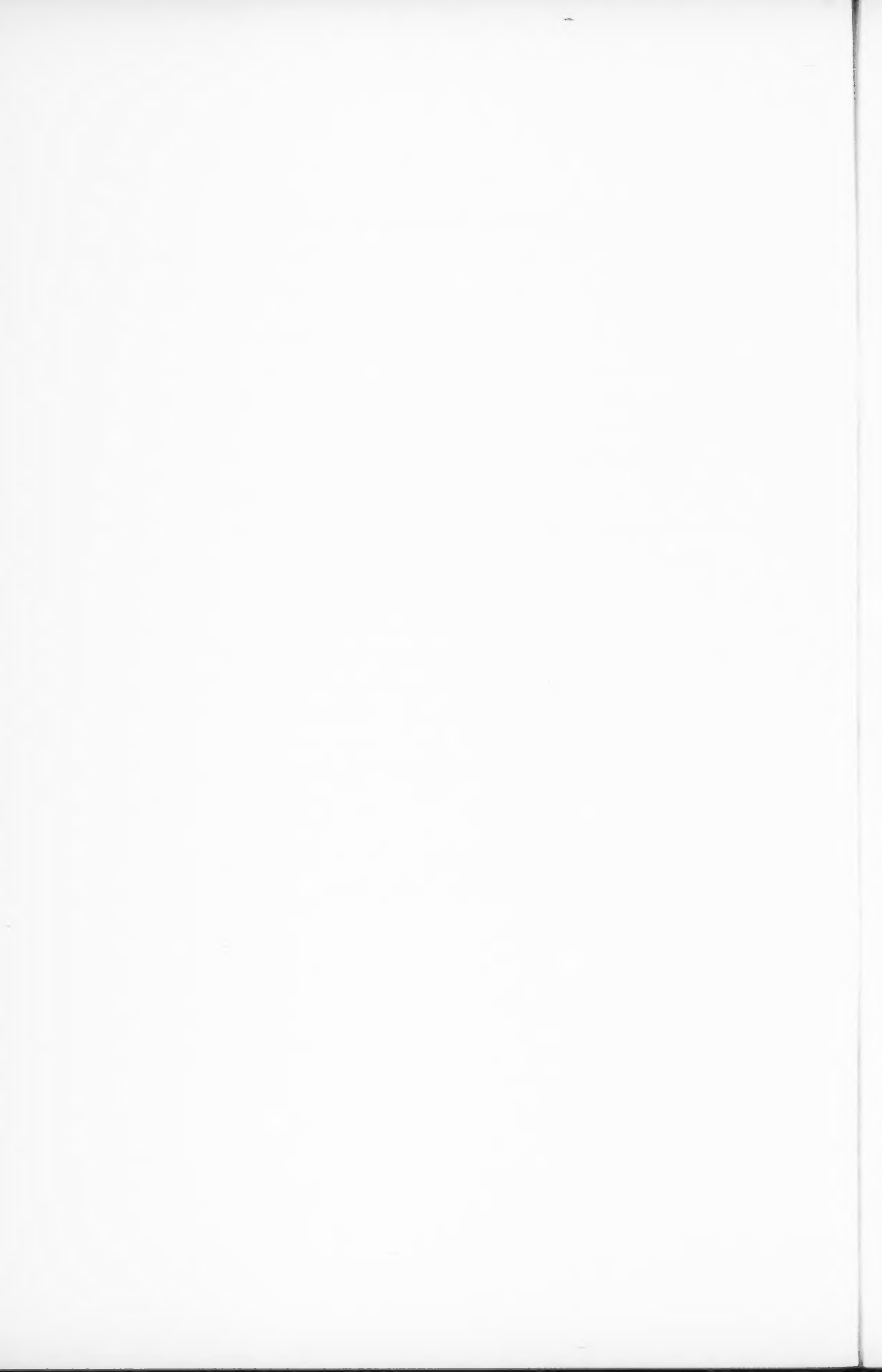
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CONSTITUTIONAL AMENDMENTS AND STATUTES INVOLVED

(For the sake of brevity, Foster and Lake Shore only set forth the text of those provisions not set forth completely in the petition.)

United States Constitution, Amendment XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have the power to enforce this article by appropriate legislation.

United States Constitution, Amendment XIV, Section 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. §1367

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that

they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on Section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rules 14, 19, 20 or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of Section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time or after the dismissal of the claim under subsection (a), shall

be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

42 U.S.C. §1981

(Full text set forth in petition.)

42 U.S.C. §1985(3)

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or

deprived may have an action for the recovery of damages occasioned by such injury or deprivation against any one or more of the conspirators.

42 U.S.C. §1986

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in Section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

Federal Rules of Civil Procedure, Rule 11

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or

accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Federal Rules of Civil Procedure, Rules 56(a), (c)

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

STATEMENT OF THE CASE

Respondents Lake Shore Hospital, Inc. ("Lake Shore") and James B. Foster, C.E.O. ("Foster") join in and adopt the "Counterstatement of the Case" and "Statement of the Facts" presented in the brief in opposition submitted by respondent Joseph G. Cardamone, M.D.¹

In addition, Lake Shore and Foster join in, support and adopt the arguments presented in respondent Dr. Cardamone's brief under Points I and II in regard to the first and second questions presented. Therefore, Lake Shore and Foster will not present any additional arguments on those issues.

¹ In supplement to Dr. Cardamone's "Counterstatement of the Case," it should be noted that the petitioner previously filed a petition for a writ of *certiorari* in regard to the April 20, 1988 decision of the Court of Appeals. That petition was summarily rejected or dismissed by this Court. In addition, although the present petition was filed on August 10, 1991, the office of the Clerk of this Court informed respondents that the petition was docketed on September 17, 1991 and that therefore respondents' time to file their briefs in opposition did not begin to run until that date.

SUMMARY OF REASONS FOR DENYING THE WRIT

The decisions below involved no unsettled legal issues. The case was decided by applying well settled law to the facts alleged by the petitioner. Therefore, the determination of the issues in this case has no impact upon any parties other than the litigants in this case.

A recovery under 42 U.S.C. §§1985(3) or 1986 requires a showing of racial or class-based animus. No such showing was made by the petitioner in this case.

Without a showing of a violation of some independently established right, the petitioner cannot recover under Sections 1985(3) or 1986. Because no discriminatory intent was present, the petitioner cannot show a violation of 42 U.S.C. §1981. Because no state action was present, the petitioner cannot show a violation of the fourteenth amendment to the United States Constitution. Therefore, the petitioner cannot recover under Section 1985(3) or Section 1986 for a conspiracy to violate either of those provisions.

The District Court was required to impose sanctions upon the petitioner pursuant to Rule 11 of the Federal Rules of Civil Procedure because the petitioner's motion for summary judgment was not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law.

The petition does not raise any issues of unsettled law. The District Court applied well settled law to the facts alleged by the petitioner and submitted by him in support of his own motion for summary judgment. The questions that the petitioner is asking this Court to review therefore have no impact on any parties other than the litigants in this action.

For the foregoing reasons, the writ should be denied.²

² As the Court of Appeals correctly noted in its decision, petitioner did not develop any claim based on state law at any point in this litigation. In fact, the issue of possible state law causes of action did not come up until raised by the Court at oral argument. Therefore, it is *not* an issue on this appeal.

REASONS FOR DENYING THE WRIT

POINT I

The Petitioner Is Unable To Allege Facts Sufficient To Support Claims Based On 42 U.S.C. §§1985 And 1986

A. Petitioner is Unable To Allege Racial Or Class-Based Animus.

The decisions of this Court make it clear that to recover under 42 U.S.C. Section 1985(3) a plaintiff must show a conspiracy based upon racial, or at least class-based animus. Because 42 U.S.C. Section 1986 requires a showing of a conspiracy in violation of Section 1985(3), (see, e.g., *Creative Environments, Inc. v. Estabrook*, 680 F.2d 822 (1st Cir. 1982), cert. denied, 459 U.S. 989 (1982); and *Rogin v. Bensalem Township*, 616 F.2d 680 (3rd Cir. 1980), cert. denied, 450 U.S. 1029 (1981)), racial or class-based animus is also a necessary element of a Section 1986 claim. As the District Court correctly found, and as the Court of Appeals correctly affirmed, the petitioner was unable to make any showing of racial or class-based animus. The petitioner's claims based on Section 1985(3) and Section 1986 were, therefore, properly dismissed.

To recover under Section 1985(3), the petitioner was required to show (1) a conspiracy (2) to deprive him of equal protection by (3) causing an act in furtherance of the conspiracy to be performed which (4) deprived him of a constitutional right. *United Brotherhood of Carpenters & Joiners of America, Local 610, AFL-CIO v. Scott*, 463 U.S. 825 (1983); *Griffin v. Breckenridge*, 403 U.S. 88 (1970). In *Griffin*, however, this Court held that not every conspiracy violates Section 1985(3). "The language requiring intent to deprive of *equal* protection, or *equal* privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously

discriminatory animus behind the conspirators' action." *Id.* at 102. This holding was reaffirmed by the Court in *United Brotherhood of Carpenters*, 463 U.S. at 325. The petitioner does not challenge this well-established principle. Instead, he is challenging only the District Court's application of the law to the specific facts alleged in this case. That application was based on petitioner's *own* motion for summary judgment, which clearly showed that the dispute between the petitioner and the respondents was based upon medical disagreements and not racial animus. The Court of Appeals affirmed the District Court's decision.

The petitioner's submissions were extremely lengthy and set forth in great detail the petitioner's view of the facts. There is no need for this Court to substitute its interpretation of those lengthy documents for that of the District Court, which interpretation the Court of Appeals affirmed. Because the question that the petitioner is asking this Court to decide is limited solely to the specific facts of this case, the petitioner has not pointed out any important legal issue requiring the Court's attention. This case, therefore, holds no potential impact for any parties other than the litigants in this case.

Because a decision by this Court in this case would provide no guidance to other courts or potential litigants and because there is no need to disturb a ruling by the District Court (affirmed by the Court of Appeals) that was based upon the petitioner's own submissions in support of his own motion for summary judgment, this Court should deny the writ.

B. Absent State Action or a Valid Claim Under Section 1981, Petitioner Cannot Recover Under Section 1985(3).

The lower courts in the instant action correctly held that the petitioner failed to show a violation of any right protected by Section 1985(3). Therefore, these courts properly dismissed the petitioner's claims under Section 1985(3) and Section 1986, and this Court should deny the writ.

"Section 1985(3) provides no substantive rights itself; it merely provides a remedy for violation of the rights it designates." *Great American Federal Savings & Loan Assoc. v. Novotny*, 442 U.S. 366, 372 (1979). Therefore, to recover under Section 1985(3), a plaintiff must show that some separately recognized right was violated by the alleged conspiracy. In this case, the petitioner alleged that his rights under 42 U.S.C. Section 1981 and the fourteenth amendment to the United States Constitution were violated.³ As explained in the Brief in Opposition submitted by respondent Joseph G. Cardamone, M.D., the petitioner was unable to show intentional discrimination as required for recovery under Section 1981. Therefore, the petitioner could not recover under Section 1985(3) for a conspiracy to violate Section 1981.

The petitioner also cannot recover for a conspiracy to violate the fourteenth amendment. This Court, in *United Brotherhood of Carpenters*, 463 U.S. at 825, held that where a plaintiff alleges a conspiracy to violate a right that is by definition a right only against state

³ At oral argument, the Court of Appeals questioned the respondents about the possibility of the petitioner recovering under Section 1985(3) for a conspiracy to violate the thirteenth amendment to United States Constitution. Although the petitioner has not raised the issue of the thirteenth amendment during the litigation of this case, no recovery is available to him under Section 1985(3) or Section 1986, based on the thirteenth amendment, for the reasons explained in Point I.A. above.

interference, such as the rights guaranteed by the fourteenth amendment, the plaintiff must show that the conspiracy contemplated state involvement. *Id.* at 832-833.

As the District Court correctly found, and the Court of Appeals correctly affirmed, the petitioner has made no allegations of state action. All of the respondents are purely private entities. The petitioner cannot, therefore, recover for any conspiracy allegedly designed to violate his fourteenth amendment rights. The requirement of state action for a violation of the fourteenth amendment is settled beyond any dispute. There is no need for this Court to re-examine that doctrine.

This case involves only a dispute over the application of well settled law to the specific facts of this case. That dispute was easily resolved by the District Court by reference to the petitioner's own submissions in support of his own motion for summary judgment. Therefore, review by this Court would provide no guidance for future disputes and would hold no impact for anyone other than the litigants involved. Because the petition raises no issues worthy of this Court's review, the writ should be denied.

POINT II

Rule 11 Required The District Court To Award Sanctions Against Petitioner

Rule 11 of the Federal Rules of Civil Procedure requires district courts to impose sanctions any time the rule is violated. According to Rule 11

[t]he signature of an attorney or party constitutes a certificate that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, or to cause unnecessary delay or needless increase in the cost of litigation.

*** If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, *shall* impose upon the person who signed it, a represented party, or both, an appropriate sanction . . .

(Emphasis added.)

The imposition of a sanction is mandatory when the rule has been violated. *See, e.g., Pavelic & LeFlore v. Marvel Entertainment Group*, _____ U.S. _____, 110 S.Ct. 456, 459 (1989). Further, a decision by a district court awarding sanctions will only be reversed if the district court abused its discretion. *Cooter & Gell v. Hartmarx Corp.*, _____ U.S. _____, 110 S.Ct. 2447 (1990).

The petitioner's motion for summary judgment, based upon the incredible argument that the respondents admitted all of the petitioner's allegations by recognizing that, for the purposes of a motion to dismiss, it was necessary to treat the allegations as true, was clearly not warranted by existing law or a good faith argument for extension, modification, or reversal of existing law. Therefore, the District Court did not abuse its discretion.

It is clear that the petitioner's *pro se* status did not relieve him of his duty to comply with Rule 11. The petitioner's motion for summary judgment was, in fact, signed by counsel, who withdrew from the case shortly thereafter. In addition, the District Court specifically found that the petitioner was the "main force in deciding how this case should be processed." (AP 6.) A party, represented or proceeding without assistance of counsel, must comply with the rule's requirements. *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, _____ U.S. _____, 111 S.Ct. 922 (1991). Thus, even if the petitioner were not a law student, as he was at the time of the proceedings below, the District Court would have been required to impose sanctions against him.

Because the petitioner's summary judgment motion violated Rule 11, mandatory sanctions had to be imposed by the District Court. Therefore, this Court should deny the writ.

CONCLUSION

The decision of the District Court, which the Court of Appeals affirmed, turned only upon the facts of this case. No unsettled questions of law are implicated by the petition. As such, this case bears no impact for anyone other than the present litigants. Moreover, the decisions below were correct. For these reasons, the writ should be denied.

Dated: Buffalo, New York
October 17, 1991

Respectfully submitted,

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